

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

QBE INSURANCE CORPORATION,)	
)	
Petitioner,)	
)	
v.)	CASE NO.: <u>12-cv-00054-KD-C</u>
)	
WHISPERING PINES CEMETERY,)	
LLC; et al.)	
)	
Respondent.)	

MOTION TO DISMISS CLAIMS

Pursuant to RULE 41(a)(2) of the FEDERAL RULES OF CIVIL PROCEDURE, the Plaintiff, QBE Insurance Corporation, by and through its undersigned counsel, and Defendants Tamarra Martin and Lesester Williams, by and through their undersigned counsel, hereby move this Honorable Court to dismiss QBE Insurance Corporation's claims against Whispering Pines Cemetery, LLC, Tamarra Martin and Lesester Williams, and any counterclaims or other claims said parties have or had against QBE Insurance Corporation in this action, with prejudice, each party to bear their own costs.

As grounds for said motion, the moving parties would show that a settlement was reached resolving all of the claims in the underlying action pending in the Circuit Court of Mobile County, AL, styled Tamarra Martin and Lesester Williams vs. Hodges Funeral Chapel, LLC; Whispering Pines Cemetery, LLC, et al., Civil Action No. CV-2010-901467, which formed the basis of all of the claims of said moving parties and Whispering Pines Cemetery, LLC, in the present declaratory judgment action which were related to such underlying action.

The moving parties would further stipulate and agree that this motion, and any such dismissal pursuant hereto, **shall not** affect the claims remaining in this action between QBE, Whispering Pines

Cemetery, LLC, Queen Pettway and Carliss Eaton related to the underlying action styled Queen Pettway and Carliss Eaton vs. Whispering Pines Cemetery, LLC, et al., Civil Action No. CV-2011-9022361 pending in the Circuit Court of Mobile County, Alabama.

Counsel for Plaintiff QBE represents that he has obtained the consent of counsel for Tamarra Martin and Lester Williams to affix his electronic signature hereto.

Respectfully submitted,

/s/ Keith B. Franklin

KEITH B. FRANKLIN (FRANK8196)

STEWART L. HOWARD (HOWAS7912)

Attorneys for Plaintiff QBE Insurance Corporation

OF COUNSEL:

Stewart Howard, P.C.
Post Office Box 1903
Mobile, Alabama 36633
Phone: (251) 431-9364
Fax: (251) 431-9368
stewart@slhpc.com
keith@slhpc.com

/s/ S. Joshua Briskman (with permission)

S. JOSHUA BRISKMAN (SJB-BRISS5912)

Attorney for Defendants/Counterclaimants

Tamarra Martin and Lester Williams

OF COUNSEL:

BRISKMAN & BINION, P.C.
Post Office Box 43
Mobile, Alabama 36601
Phone: (251) 433-7600
Fax: (251) 433-4485
jbriskman@briskman-binion.com

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

J. Brian Duncan, Jr.
David G. Wirtes, Jr.
Cunningham Bounds, LLC
Post Office Box 66705
Mobile, Alabama 36660

Samuel Joshua Briskman
Briskman & Binion PC
205 Church Street
Mobile, AL 36602

And I hereby certify that I served by U.S. Mail, properly addressed and first class postage, prepaid, the foregoing to the following:

WHISPERING PINES CEMETERY, LLC
305 North Dearborn
Mobile, Alabama 36603
(Notice Purposes Only)

Travis M. Bedsole, Jr.
U.S.B.A.
Post Office Box 36652-3083
Mobile, Alabama 36652
(Notice Purposes Only)

Michael B. Smith
Post Office Box 40127
Mobile, Alabama 36640
(Notice Purposes Only)

/s/ Keith B. Franklin
OF COUNSEL